

Montana Water Court
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FILED
05/04/2023
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0117-R-2023
Stern, Anika
4.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

CLAIMANTS: Glenn R. Wiseman; Sandra M. Wiseman;
Moses J. Leavens; Raina M. Leavens

CASE 41U-0117-R-2023
41U 104273-00

OBJECTOR: United States of America (Bureau of Land
Management)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Glenn R. Wiseman, Sandra M. Wiseman, Moses J. Leavens, and Raina M. Leavens are the record co-owners of stock claim 41U 104273-00.

2. Claim 41U 104273-00 was decreed with DNRC issue remarks:

41U 104273-00:

POINT OF DIVERSION, RESERVOIR RECORD, AND SOURCE NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWSWSW SEC 18, T17N, R2W, CASCADE COUNTY.

3. The United States of America (Bureau of Land Management) objected to claim 41U 104273-00. The Bureau of Land Management Objection states:

Place of use (POU) is overly-broad and does not precisely describe the location of the claimed impoundment. The legal land description includes federal land administered and managed by the Bureau of Land Management ("BLM"). Request the POU be refined to match the claim's point of diversion and reservoir record legal land description - SWSWSW Sec 18 Twp 17N Rge 2W Cascade County. Refinement of the POU as requested will resolve BLM's objection.

4. On August 31, 2022, the Claimants filed a Motion to Amend, requesting the following modifications be made to claim 41U 104273-00:

☐ Other - _____

⑦ Place of Use: County - Cascade ☒ See attachment

5000 acres	1A Lot	Block	1/4	SW 1/4	SW 1/4	Section	18	T	17N	R	02W
5000 acres	1B Lot	Block	1/4	SW 1/4	SW 1/4	Section	18	T	17N	R	02W
_____ acres	_____ Lot	Block	1/4	_____ 1/4	_____ 1/4	Section	_____	T	_____	R	_____
_____ acres	_____ Lot	Block	1/4	_____ 1/4	_____ 1/4	Section	_____	T	_____	R	_____
_____ acres	_____ Lot	Block	1/4	_____ 1/4	_____ 1/4	Section	_____	T	_____	R	_____
10.12	Total Acres		Subdivision _____								

☒ Replaces claimed information ☐ Supplements claimed information ☐ Addendum included

5. A deadline was set for the parties to address the place of use issue remark decreed on claim 41U 104273-00 and the Objection to the claim. A copy of the Motion to Amend was included with the Order Setting Filing Deadline.

6. On April 26, 2023, the parties filed a Stipulation to Resolve Objections. The Stipulation also addressed the place of use issue remark. The Stipulation stated:

C. Claim 41U 104273-00 asserts a stock right on a Spring, Unnamed Tributary of Sawmill Creek. The place of use is described as the entirety of Section 18, Township 17N, Range 2W, Cascade County. This description is overbroad and inaccurately includes federal land.

D. Claimants attempted to resolve the objection by filing a Motion to Amend on August 31, 2022, but the Court pointed out two problems with the Motion to Amend in its Order dated February 27, 2023. Instead of the Motion to Amend, Claimants now wish to resolve the objection through this Stipulation.

Pursuant to the Stipulation, the Claimants withdraw the August 31, 2022 Stipulation. Additionally, pursuant to the Stipulation, the parties agree claim 41U 104273-00 should be amended, as follows:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSW	18	17N	2W	CASCADE

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The point of diversion, reservoir record, and source name issue remark decreed on claim 41U 104273-00 is a notice-type issue remark. As the Objection has been resolved, no further proceedings are required.

RECOMMENDATIONS

1. Claim 41U 104273-00 should be modified as shown in Finding of Fact No. 6.

2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Glenn R. Wiseman
Sandra M. Wiseman
House 70 10th Lane
Fort Shaw, MT 59404

Moses J. Leavens
Raina M. Leavens
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Great Falls, MT 59404

Service Via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 104273-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

GLENN R WISEMAN
HOUSE 70 10TH LANE
FORT SHAW, MT 59443

SANDRA M WISEMAN
HOUSE 70 10TH LANE
FORT SHAW, MT 59443

MOSES J LEAVENS
1102 11TH ST NW
GREAT FALLS, MT 59404

RAINA M LEAVENS
1102 11TH ST NW
GREAT FALLS, MT 59404

Priority Date: MAY 1, 1972

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF SAWMILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	18	17N	2W	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 4

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

THE POINT OF DIVERSION IS LOCATED IN TR 1A & TR 1B OF COS #3996.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSW	18	17N	2W	CASCADE

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSW	18	17N	2W	CASCADE

THE PLACE OF USE IS LOCATED IN TR 1A & TR 1B OF COS #3996.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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